

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000813-001 DT

11/12/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

KI BLACKMAN

KI BLACKMAN
824 S MILL#337
TEMPE AZ 85281-5603

v.

TIMBERLAKE APT GREY STAR (001)
ORE JOHN (001)

AMY ZINMAN
RACHELLE Z LEIBSOHN

TEMPE JUSTICE CT-EAST
BRIAN KARTH, COURT
ADMINISTRATOR
LIMITED JURISDICTION
111 W MONROE, #820
PHOENIX AZ 85003

MINUTE ENTRY

This case has been under advisement since the conclusion of the evidentiary hearing and oral arguments on Friday, November 7, 2003. This Court has considered and reviewed the pleadings submitted by the parties, the testimony of witnesses, all of the exhibits admitted at the evidentiary hearing, and the arguments of counsel and Ms. Blackman.

This Court has special action jurisdiction pursuant to the Arizona Constitution Article VI, Section 18, and Rule 4(b), Rules of Procedure for Special Actions. The exercise and acceptance of special action jurisdiction by an appellate court is highly discretionary,¹ and therefore, the decision to accept jurisdiction encompasses a variety of determinants.² Special action jurisdiction by an appellate court is appropriate where an issue is one of first impression of a purely legal question, is of statewide importance, and is likely to arise again.

¹ *Blake v. Schwartz*, 202 Ariz. 120, 42 P.3d 6 (App. 2002); *Haas v. Colosi*, 202 Ariz. 56, 40 P.3d 1249 (App. 2002).

² *State v. Jones ex rel. County of Maricopa*, 198 Ariz. 18, 6 P.3d 323 (App. 2000).

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Additionally, special action jurisdiction may be assumed to correct a plain and obvious error committed by a trial court,³ and may be considered when there is no equally plain, speedy, or adequate remedy by way of appeal.⁴

In this case, Special Action jurisdiction will be exercised by this court to correct a plain and obvious error committed by the trial court. This Court makes the following findings of fact and conclusions of law:

- (1) Petitioner, Ki Blackman, was the defendant in a forcible detainer case brought by Respondent, Timberlake Apartments/Grey Star. The case proceeded to trial on September 23, 2003 before the Honorable John Ore, Justice of the Peace for the East Tempe Justice Court Precinct. After hearing the evidence presented, Judge Ore ruled in favor of Respondent Timberlake Apartments/Grey Star. Judge Ore ordered that the Writ of Restitution would issue five (5) days from the date of judgment.
- (2) Ki Blackman testified that the same day of the trial (September 23, 2003) she came back to the court and told a clerk at the filing counter that she wanted to file an appeal. She specifically requested the form for designation of the record on appeal. Ms. Blackman claims that she was told by at least one clerk that the clerk did not know what to give her and didn't know if she (Blackman) could appeal. Ms. Blackman came back the following day and was told essentially the same information. Later, on October 2, 2003, Ms. Blackman returned to the East Tempe Justice Court, filed a Notice of Appeal form that was supplied by court staff, filled out a designation of the record and filed this with the clerk also. On October 8, 2003, Ms. Blackman posted the supersedeas bond; however, the Writ of Restitution had already issued.
- (3) Two clerks from the East Tempe Justice Court testified: Linda Childers and Shirley Dowland. Ms. Childers explained that she had seen Petitioner Blackman several times but does not remember if she was the clerk who spoke with Ms. Blackman on September 23, 2003. Ms. Childers does remember that when she spoke with Petitioner after a forcible detainer trial, that Petitioner did not ask for information about appealing, and only asked her for a designation of the record form. Shirley Dowland testified that she is the Forcible Detainer

³ *Amos v. Bowen*, 143 Ariz. 324, 693 P.2d 979 (App. 1984).

⁴ *Schwartz*, 202 Ariz. 120, 42 P.3d 6; *State ex rel. Romley v. Superior Court*, 198 Ariz. 164, 7 P.3d 970 (App. 2000); *Luis A. v. Bayham-Lesselyong ex rel. County of Maricopa*, 197 Ariz. 451, 4 P.3d 994 (App. 2000).

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Clerk for the East Tempe Justice Court. She explained that the first time she saw Petitioner was after the Writ of Restitution had been issued and executed. She recalls that on October 2, 2003, she handed the Petitioner an appeals packet that contained a Notice of Appeal form, a Designation of the Record form, and some brief instructions on how to file an appeal. Ms. Dowland testified that Petitioner filled out these forms and filed them on October 2, 2003. Ms. Dowland explained that the clerk's office keeps appeal packets available to hand out to litigants behind the counter. More importantly, Ms. Dowland testified that her office has never refused to accept an appeal, or a Notice of Appeal.

- (4) Exhibit #3 is a copy of the Notice of Appeal filed by Ki Blackman on October 2, 2003. Exhibits #1 and #2 consist of a Motion to Dismiss the Appeal, filed by Respondent Timberlake Apartments/Grey Star on October 9, 2003, and an order dated the same date from the East Tempe Justice Court granting that motion.
- (5) The testimony of the clerks from the East Tempe Justice Court was credible and persuasive on the issues of the routine practices by clerks and the availability of appeals forms for litigants at the filing counter. This Court finds that that testimony was credible. This Court concludes that the testimony of the Petitioner and Will Schwartz was not as credible, and that the Petitioner has failed to sustain her burden of proof in this case.

This Court explained to the parties on October 29, 2003 in open court that it believed the issues presented in this Petition for Special Action were fact intensive. This Court now concludes that the issues presented are also to be determined by the facts. This Court concludes that the clerks of the East Tempe Justice Court do maintain notices of appeal forms, and indeed a packet of information designed to assist *pro se* litigants who desire to appeal. The clerks of the court also have no interest in preventing anyone from filing a Notice of Appeal. The clerks do not refuse to accept Notices of Appeal. Finally, this Court must conclude that Petitioner, Ki Blackman, was not prevented from timely filing her Notice of Appeal.

This Court also determines from the exhibits presented to it (specifically exhibits #1 and #2) that a procedural motion was presented to the East Tempe Justice Court after a Notice of Appeal had been filed. The new Superior Court Rules of Appellate Procedure-Civil, effective June 1, 2003, require that procedural motions shall be sent to the Superior Court for ruling. Those rules specifically provide in Rule 8(c)(1):

Procedural motions are motions that may determine whether the appeal should go forward. Procedural motions

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include motions to dismiss the appeal or cross-appeal where there is no right to appeal or the notice of appeal or cross-appeal was not timely filed, motions to strike a memorandum, or motions for trial *de novo*. Procedural motions may be made at anytime after the filing of the notice of appeal. As set forth herein, procedural motions shall be presented to the trial court and ruled upon by the Superior Court (emphasis added).

The balance of Rule 8, Superior Court Rules of Appellate Procedure-Civil, explain the procedures to be followed by a trial court upon the receipt of such a procedural motion. The trial court is required to hold the motion pending receipt of a response for 14 days.⁵ And, following the receipt of a response, the rule provides the manner in which the motion shall be transmitted to the Superior Court for ruling.⁶

The Motion to Dismiss the Appeal, filed by Timberlake Apartments, is clearly a procedural motion, though it was not labeled as such within its caption. Motions to dismiss the appeal are specifically enumerated within the rule quoted above. It is clear that the Respondent Judge erred, as a matter of law, when he granted Respondent, Timberlake Apartments/Grey Star's Motion to Dismiss the Appeal on October 9, 2003. The Respondent Judge was without jurisdiction or authority to rule on such a motion.

It further appears to this Court that limited Special Action Relief should be granted in this case only to the extent of the entry of an order requiring the trial judge to vacate its order of October 9, 2003 denying Respondent's Motion to Dismiss the Appeal, with further instructions to process the procedural Motion to Dismiss the Appeal in accord with the new rules of procedure cited in this opinion.

IT IS ORDERED denying the relief requested in the Petition for Special Action, including the request for a stay order.

IT IS FURTHER ORDERED directing the East Tempe Justice Court, on this Court's own motion, to vacate its order of October 9, 2003, in CV 03-03488FD wherein the Respondent Judge granted Respondent's Motion to Dismiss the Appeal.

IT IS FURTHER ORDERED directing the Respondent Court to process the appeal in the above-referenced case number, in accord with the Superior Court Rules of Appellate Procedure-Civil, and to refer any procedural motions to this court in the manner described within those rules.

⁵ Rule 8(c)(2), Superior Court Rules of Appellate Procedure-Civil

⁶ Rule 8(c)(4), Superior Court Rules of Appellate Procedure-Civil

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IT IS FURTHER ORDERED as the Petitioner has appeared *pro se* before this court, this Court will sign this minute entry as an order and judgment.

FILED: Exhibit Worksheets

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT